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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 WAYNE BALIGA,

4 Plaintiff,

5 v.

18 CV 11642 (VM)

6 LINK MOTION, INC., et al.,

7 Defendants.

8 -----x

9 New York, N.Y.
March 29, 2019
10 9:45 a.m.

11 Before:

12 HON. VICTOR MARRERO,

13 District Judge

14 APPEARANCES

15 THE SEIDEN GROUP

Attorneys for Plaintiff

16 BY: MICHAEL CILENTO

17 CKR LAW, LLP

Attorneys for Defendant Vincent Wenyong Shi

18 BY: MICHAEL J. MALONEY

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1 THE COURT: Good morning. This is a proceeding in the
2 matter of Wayne Baliga v. Link Motion, Inc., Vincent Shi, Jia
3 Lian, and Xiao Yu. The Court scheduled this proceeding on an
4 order to show cause for contempt that the Court endorsed on
5 March 15, and scheduled this proceeding to hear these
6 circumstances under which the defendants, allegedly, according
7 to the plaintiff, did not comply with earlier order of the
8 Court and appointment of a receivership that the Court had
9 ordered on February 1st, 2019, after the defendants did not
10 appear in this matter within the requisite timeframe.

11 Subsequent to the scheduling of these proceedings, the
12 Court received by letter dated March 28 a submission from
13 defendant Vincent Shi moving for dismissal of all the claims
14 against Mr. Shi, dissolving the preliminary injunction that the
15 Court had entered on February 1st, discharging the receiver, in
16 the part on the grounds that Mr. Shi was not properly served,
17 and that the Court lacks jurisdiction over Mr. Shi.

18 So that is the posture of the case as the Court
19 understands it.

20 Let me ask Mr. Cilento whether he may wish to add
21 anything to what the Court has said, and what plaintiff
22 understands the posture of the case may be in relation to this
23 defendant and the other defendants.

24 MR. CILENTO: Sure. And your Honor, everything you
25 said was correct for the posture. I believe that defendants'

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1 submission yesterday can be broken down into two separate
2 parts. One is the motion to dismiss claims as it relates to
3 Shi as well as to dissolve the injunction, the receivership,
4 and the submission in opposition to the order to show cause for
5 contempt which we are here for today. And I believe I didn't
6 submit anything in response. I do have a sworn to affidavit
7 from a consultant to the receiver explaining recent events that
8 have taken place over the last couple of weeks, if your Honor
9 wishes to see that today or I could also submit it online
10 after.

11 But I believe today we are only here for the order to
12 show cause on contempt. I don't believe that today should deal
13 with the dismissal of the claims against defendant Shi or the
14 removal of the receivership or the dissolution of the
15 injunction.

16 THE COURT: Let's put Mr. Shi aside for a moment.
17 What is your understanding concerning the appearance or
18 non-appearance of the other defendants and the corporate
19 defendant? To what extent was service properly made on all
20 defendants, and to your knowledge, have any communications been
21 had with any of them?

22 MR. CILENTO: Well, it is clear that the corporate
23 entity Link Motion does not have counsel and has not appeared
24 since their former counsel withdrew. It's very clear that this
25 Court has jurisdiction over that company. It's very clear that

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1 service was properly made on that company through their
2 registered agent in New York, also through their corporate
3 counsel in New York who appeared in the action for the company
4 before withdrawing.

5 As it relates to the individual defendants, I believe
6 that the Court does have jurisdiction over them. I believe
7 that service was attempted on the individual defendants.
8 Whether that service rises to the level of completion needed in
9 this court, I think there are good arguments on both sides, and
10 I'm happy to brief that argument and I plan to in my opposition
11 to counsel's most recent motion.

12 But, I think what this Court needs to understand here
13 is that Vincent Shi's counsel has kind of conflated two
14 different issues here. There is service as to the complaint in
15 the underlying action, which cannot be argued was properly
16 served on the corporate entity. I think it can be argued that
17 service on the individual defendants may not have been proper
18 at this stage, but that's something that we can brief and
19 that's something that I -- that can be fixed. But it can't --

20 THE COURT: Let me stop you, Mr. Cilento. Rather than
21 briefing, would it not be more prudent, if you acknowledge that
22 there may have been deficiencies in the method of service, cure
23 the deficiencies and make proper service?

24 MR. CILENTO: Yes, I think there may be deficiencies.
25 I just hesitate because I know that the -- the corporate

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1 entity's counsel did forward the complaint to the individual
2 defendants. So whether that is sufficient or not I think does
3 require some briefing. But one important point I want to make
4 is that there's no question that there was proper service of
5 the receivership order and injunction on defendant Shi.

6 So, counsel for Mr. Shi is conflating the two issues.
7 He is saying there was no service of the complaint, therefore,
8 Shi is not required to comply with the order. But, there's no
9 question that the receivership order was granted over the
10 company, who was served properly, and in that receivership
11 order, it says anyone with actual notice of this order,
12 personal service or otherwise, must comply. The order is very
13 clear, the method of service is very clear. I complied with
14 the order, in getting this to the individual defendants. It's
15 clear that they have actual notice of it. They've had actual
16 notice of it and they were required to comply with it.

17 Whether there was service on them or not for the
18 underlying complaint, that's something which defendants'
19 counsel has argued now and that's fine. That's proper. But
20 they cannot argue that they were not -- that Mr. Shi was not,
21 did not have actual notice of the receivership order which was
22 valid and still is valid.

23 THE COURT: Thank you. Mr. Maloney.

24 MR. MALONEY: Good morning, your Honor. I'd like to
25 address a few points about the question of service and

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jurisdiction.

THE COURT: As it relates to Mr. Shi?

MR. MALONEY: As it relates to Mr. Shi, your Honor.

The basic principle is that an individual cannot be held in contempt until they have been served with process. And process we all know is by law required to be served in a certain manner which was not performed here in this action with respect to Mr. Shi.

THE COURT: Mr. Cilento has made a distinction between service of process of the complaint and service with regards to the receivership order and the notice that was provided there as to the corporate defendant and any knowledge of the person. You heard what he alleged.

MR. MALONEY: Yes, your Honor, and I have something to say about that as well. The rule applies with respect to the order, the receivership order as well process must be served. There is a line of cases providing for an exception to the requirement of service of process when a person with knowledge of the order does something in violation of the order along the lines of diverting assets of the company under which the receiver has control. That's the limitation of the exception, your Honor.

In this case, there is no evidence that Mr. Shi did anything of that nature. What the receiver has asked is that Mr. Shi affirmatively invest new funds into the company, in

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1 order to fund the account that the Court described in its
2 order. Mr. Shi has no legal obligation to invest further funds
3 into this company. His obligation to the company is limited to
4 the price he paid for his shares, which has already been paid.

5 The receiver, after obtaining the injunction here in
6 New York, took that order to Hong Kong, and obtained an
7 injunction in Hong Kong over the company's accounts in Hong
8 Kong. That is the reason why no assets have been transferred
9 anywhere, because they are now frozen in Hong Kong.

10 Now, this in part stems back to somewhat we believe
11 fundamentally faulty recitation of facts originally presented
12 to the Court in the verified complaint. Your Honor, what the
13 plaintiff failed to advise the Court here is that Link Motion
14 is organized in a matter of what's called a variable interest
15 entity. The assets that plaintiff complains of Link Motion has
16 no legal interest in. The only legal interest that Link Motion
17 has in the operations in China is by way of a contract. A
18 contract between Link Motion and a holding company in the PRC
19 called Beijing Technology. That contract provides that Beijing
20 Technology must pay to Link Motion profits generated from
21 Beijing Technology's business. This is structured to comply
22 with PRC laws, and the appointment of a non-PRC citizen to
23 control over Link Motion will, we believe, cause the entire
24 structure to be in violation of PRC law, and will likely
25 destroy whatever value remains in Link Motion.

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1 Your Honor, so my ultimate point is there is no
2 evidence that Mr. Shi has done anything to violate the order
3 currently in place. The order cannot be applied to Mr. Shi
4 because he hasn't been served with process. And there is
5 nothing here to suggest that the exception that plaintiff has
6 referred to is satisfied here.

7 THE COURT: Thank you. Mr. Cilento.

8 MR. CILENTO: Yes, your Honor. So, on the first point
9 of service of process. Service of process of the receivership
10 order, the case law is very clear on this that the wording of
11 the order is sufficient for service of process. So whatever
12 that order says, that's how you serve process. The order says
13 actual notice, personal or otherwise. It makes sense, given
14 the circumstances of the case and the details of the
15 receivership order, it would be actual notice instead of
16 personal service since everyone is in China.

17 As far as Mr. Shi's argument that the receiver's
18 asking him to personally fund anything, I just, I don't know
19 where that comes from. This company has hundreds of millions
20 of dollars in accounts in assets both in cash and in assets.
21 We're not asking Mr. Shi to fund anything. We asked him to
22 fund the receivership accounts, as per the order, which he has
23 not done. There's no personal investment, we are not asking
24 him to personally invest anything. We are asking him to take
25 \$100,000 out of the \$570 million we know this company has in

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1 the PRC, and transfer it to an account so we can pay
2 professionals.

3 As far as the lockup of the accounts in Hong Kong,
4 those are two very small accounts of this company which
5 maintains most of its assets in accounts in the PRC in China.
6 So, the argument that the receiver has lockup accounts in Hong
7 Kong is the reason why nothing can be transferred or funded, is
8 just not true.

9 As far as faulty facts in the verified complaint,
10 okay, it is very clear that defendant Shi and the other
11 individual defendants of Link Motion have diverted assets out
12 of that company's name into ownership of third parties that no
13 one knows who they are. We have lots of evidence of this. We
14 have e-mails from the board of directors saying who is this
15 entity that Mr. Shi just transferred ownership of their major
16 asset. Who is this? He didn't -- he's not complying with the
17 board of directors, with any of the resolutions, he's doing
18 everything on his own.

19 We have evidence that there are all kinds of illegal
20 related transactions between Mr. Shi and the company's
21 noteholder. Basically, there's a ton of evidence that I have
22 submitted already in support of the injunction receivership
23 that the counsel has just not addressed whatsoever.

24 I now have another affidavit from the receiver's
25 consultant, and by the way, the receiver is very active in this

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1 case, and he has professionals in China, in Hong Kong, working
2 on this case, who have been in contact with board members,
3 employees, and have tried to get in contact with Mr. Shi who
4 has refused those efforts.

5 But basically, our agents and consultants of the
6 receivership in China have now sworn to us and told us that
7 defendant Shi has gone into the offices of Link Motion in
8 China, and with his own team of outside people, they went into
9 the offices, and requested the legal team and the accounting
10 team to hand over all files to them, which they were removing
11 from the office. And some of the employees stood up and said,
12 no, we're not giving you these legal files and these accounting
13 records. And Shi said, okay, you're fired, you're fired,
14 you're fired. Had his team come in, physically take computers,
15 physically take the files, and move it out of the office.

16 Before the receiver was in place, there were I believe
17 80 employees, that went down to about 30. And then after this
18 last raid Mr. Shi and his outside team did at the office, the
19 employees are now down to 10.

20 We have e-mails to the receiver's consultants from
21 employees of Link Motion saying Mr. Shi has raided the office,
22 he has taken the files, he has fired us for not going with him.
23 And he is now and Mr. Shi is now in the process of taking the
24 last remaining valuable assets of the company, which are
25 tech-related and application-related, and he's moving those to

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1 different entities all out of Link Motion's control, with no
2 cooperation from the board of directors or the employees.

3 So there is a ton of evidence that he has violated
4 this order. Not to mention the fact that the order
5 specifically says you must cooperate with the receiver. And
6 that's what the receiver tried to do at first. He sent letters
7 to Mr. Shi saying let's talk about this. Let's communicate.
8 Let's see what's going on. We need the books and records to
9 make sure everything is legitimate. And Mr. Shi has refused to
10 cooperate with the receiver. He knows that the receiver is in
11 place. Refuses to cooperate. That right there is grounds for
12 contempt.

13 Not to mention this latest affidavit that I have
14 showing that he raided the offices, is taking everything out of
15 the offices, is firing employees, and what the e-mail shows the
16 employees telling the receiver's agents in China, please can
17 the receiver do something, we are not getting paid, he is
18 firing everyone, we need help. This is here.

19 THE COURT: Let me ask, Mr. Cilento, all these
20 terrible things going on in China and Hong Kong and elsewhere,
21 have the plaintiff or anyone else made an attempt to challenge
22 these actions under local law there?

23 MR. CILENTO: I do not believe that -- the defendants?
24 Have they came into the Hong Kong, is that what you're asking?

25 THE COURT: Whoever is complaining about all of these

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1 terrible things going on.

2 MR. CILENTO: Oh. Have they taken actions in China?

3 THE COURT: Yes.

4 MR. CILENTO: So that is basically underway right now.
5 The receiver has just hired a local Beijing attorney to start
6 the process there. It's very sensitive and political. We are,
7 our agents were in communications with the employees to contact
8 the local police after this raid, but it's a very difficult
9 thing to do there. But, yes, the receiver has hired a local
10 Beijing attorney to start the local process there.

11 And one other point about this VIE structure that
12 defendants' counsel is saying if a non-PRC citizen is appointed
13 over the company, it will lose all value. That's just not
14 true. First, the VIE is a legal fiction. It is not an actual
15 part of the law. And two, even if it were, the receiver is not
16 going to sit on the board himself. He has a team of Chinese
17 citizens who are going to run this company. Basically, one of
18 the current board members right now is working with the
19 receiver, and the receiver is going to appoint that board
20 member as interim CEO and chair of the board and have that
21 Chinese citizen board member run the company. And this current
22 board member who the receiver is working with to run the
23 day-to-day operations is very well respected by the employees,
24 and everyone there, and we believe it will be a great
25 transition to actually restore the value of this company.

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1 But the bottom line is this. There is \$570 million
2 that is unaccounted for, and the shareholders want to know
3 where that money is. And Mr. Shi is hiding it. He's hiding it
4 through an attenuated line of structure of corporate entities
5 that is something that you've never seen. I saw the flow chart
6 of what is going on, and it is crazy. But he is hiding assets
7 all over the place, it is very difficult to track. It's very
8 difficult for Chinese citizens to track, since everything is in
9 Chinese language and whatnot. So, it's a very difficult thing.

10 But the bottom line is there is \$570 million. If
11 defendants' counsel can tell us where that money is, and tell
12 us that it's going to go to the company and be distributed to
13 the shareholders, then we are fine with Mr. Shi staying in
14 place. But until that happens, the receiver is going to do
15 everything he can to replace Vincent Shi, get the \$570 million
16 back into Link Motion's actual control, and distribute to
17 shareholders, if necessary.

18 THE COURT: Let me pursue this questioning,
19 Mr. Cilento. Assuming that this receiver commences some form
20 of proceedings under domestic law in China or Hong Kong,
21 wherever, in those proceedings, would the issue of whether or
22 not Mr. Shi and the company and others' notice and service of
23 process be a matter that would need to be examined?

24 MR. CILENTO: I'm glad you asked that question because
25 I forgot I wanted to bring that point up. So in defendants'

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1 brief, he makes this argument that the receiver lied and said
2 that the defendants were all served, and then actually made a
3 correction to his affidavit in Hong Kong saying, actually,
4 we're not 100 percent sure if they were served. We know the
5 corporate entity was served and the individuals were attempted
6 to be served through the registered agent. Okay.

7 Three days after the correction went in to the Hong
8 Kong court, the correction being actually it was just a
9 corporate entity that was -- that had counsel appear for them,
10 none of the individual defendants in the Southern District,
11 three days after that correction, the Hong Kong court issued
12 the injunction. Okay. So, there was no foul play there. It
13 was a miscommunication, actually on my part, where I said that
14 everyone was served through the corporate -- through the
15 registered agent, and DLA appeared for Link Motion. It was a
16 miscommunication. It was corrected. The Hong Kong court
17 granted the injunction, knowing that the individual defendants
18 did not have counsel and did not appear in this action. So, I
19 imagine it would be the same in China, too, and I imagine the
20 reason is because the receivership order is valid.

21 The company had counsel appear in this action, didn't
22 fight the receivership, and the order is valid.

23 And so, what we did in Hong Kong, the receiver did in
24 Hong Kong was domesticate that receivership order, which didn't
25 require the individual defendants to be -- put it this way. If

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1 the individual defendants weren't named in this lawsuit,
2 everything would be the same. Right. We would still be able
3 to seek contempt against Vincent Shi for not complying with the
4 order. So, imagine that the individual defendants weren't
5 named in this lawsuit, everything would be the same.

6 THE COURT: Thank you. Mr. Maloney.

7 MR. MALONEY: Your Honor, a couple things here. I'd
8 like to talk a little about the receivership order itself. As
9 you may recall, the receivership order was entered on the
10 purported consent of the company. However, there are a lot of
11 strange circumstances relating to that purported consent.
12 There is no evidence of any action or resolution by the board
13 of directors of Link Motion agreeing to the entry of a
14 preliminary injunction and a receiver in New York over its
15 affairs. In fact, there is no evidence of any consent by any
16 officer or director of the company at all, to the institution
17 of a preliminary injunction or receivership.

18 The only evidence we have is the signature by one
19 attorney at DLA Piper who purported to appear on behalf of the
20 company and then who promptly withdrew. The plaintiff has in
21 no other way made a showing of the bases necessary for the
22 institution of a preliminary injunction or a receivership here.
23 And the Court has not made any finding of the bases necessary
24 for the institution of the preliminary injunction or the
25 receivership here. We plan to challenge the validity of the

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1 preliminary injunction and the receivership on those grounds.

2 On the VIE structure, your Honor, Link Motion first
3 submitted a form F1 in and around 2011. From that day to the
4 present, it has consistently described the way the VIE business
5 structure functions.

6 I want to direct the Court's attention to Exhibit 11
7 to my declaration where the company has disclosed its
8 understanding of how the VIE structure works. In page 26 and
9 27 the company describes how in certain sensitive business
10 areas, PRC law requires entities operating in those areas to be
11 controlled by PRC citizens. The company describes the
12 definition of control under applicable law. I am going to read
13 one section of that definition. It says: Having the right to
14 directly or indirectly appoint not less than one half of the
15 members of the board of directors or other similar decision
16 making body of the enterprise. That is exactly what the
17 receiver is proposing to do here.

18 On the next page, page 27, the company describes,
19 conversely, if the actual controlling person is of foreign
20 nationalities, then the variable interested entities will be
21 treated as FIE, which is a foreign investment entity, and any
22 operation in the industrial category of the negative list
23 without market entry clearance may be considered as illegal.

24 Your Honor, I also would like to point your attention
25 to the other exhibits to my declaration. These are press

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1 releases filed by the company with the SEC, regarding the
2 company's transactions involving the assets that plaintiff
3 complains of FL Mobile and Show Self. In short, the company
4 has disclosed fully and accurately for over four years now that
5 it's been trying to divest those assets in the PRC, and has
6 attempted in several ways and with several counter parties to
7 do so.

8 In Exhibit 14 -- I'm sorry. Exhibit 13 to my
9 declaration, you have now disclosed the notice of arbitration,
10 the divestment of those assets is the subject of a litigation
11 before the Hong Kong international arbitration center, which is
12 still pending.

13 Ultimately, what's going on here is that plaintiff is
14 trying to alter the situation on the ground with respect to a
15 pending arbitration in Hong Kong regarding these divestments.
16 And the company is trying its best to pursue its rights with
17 respect to the divestment agreements it previously disclosed.

18 Finally, your Honor, with respect to the evidence that
19 counsel spoke about here today, as far as I know, none of that
20 evidence he referred to is before the Court right now.
21 Certainly have not had an opportunity to review it. We have
22 really nothing more than allegations here from the plaintiff.
23 I don't think that's a basis to find Mr. Shi in contempt.

24 THE COURT: Mr. Maloney, one other mention that occurs
25 to me based on everything that both parties have said, in light

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1 of all of the developments in this matter overseas in China and
2 Hong Kong, the assets that are involved presumably are located
3 there somewhere, all of the people who have control over those
4 assets or do not have control of the assets are somewhere over
5 there. The individual defendants are over there.

6 Why is not this matter being litigated and resolved
7 elsewhere under local law rather than in New York? In other
8 words, is there a forum non conveniens issue here?

9 MR. MALONEY: There is, and we've touched upon that in
10 our papers. Fundamentally speaking, the case is severely
11 flawed. The primary basis for personal jurisdiction in New
12 York asserted by plaintiffs arises under the securities laws,
13 where they allege the defendants made certain statements
14 directed to U.S. citizens in connection with the purchase and
15 sale of securities. Without establishing those allegations,
16 there is no personal jurisdiction here in New York.
17 Plaintiff's claims are fundamentally flawed because they do not
18 allege the purchase or sale of securities. There is just no
19 personal jurisdiction of the securities laws. The other
20 allegations relate to ordinary allegations of corporate
21 mismanagement.

22 There is no personal jurisdiction in New York because
23 of precisely the issues that you identified, your Honor. All
24 the people are in Beijing, all the assets are in China. This
25 is a local matter that should be pursued either in China, under

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1 local law in China, or in the Cayman Islands where Link Motion
2 is organized.

3 Essentially, what plaintiff has done here is
4 bootstrapped their case by way of a temporary restraining order
5 and preliminary injunction obtained in New York. We think that
6 was made in bad faith. And to the extent that ultimately
7 impairs the VIE structure of this company, we do think Mr. Shi
8 will look into his rights vis-a-vis plaintiff and the receiver
9 for doing so.

10 THE COURT: Thank you. Mr. Cilento, can you address
11 the issue I've just raised concerning the forum non conveniens.

12 MR. CILENTO: Sure. That's all well and good what
13 counsel said, except the fact that we are here to defend and
14 recover for U.S. shareholders who have been defrauded by this
15 Chinese company. The shareholders purchased shares through
16 ADRs from Deutsche Bank in New York, the stock traded on New
17 York stock exchanges, and the investors that this recovery
18 effort are underway for are U.S. investors. They have no
19 recourse in China.

20 This is a disturbing trend that has happened over the
21 last 10 or 15 years, where Chinese companies have come into the
22 U.S., reverse merged into shell companies listed on the New
23 York stock exchanges, raised money from U.S. investors, and
24 then went dark. Went dark on the U.S. investors, went dark on
25 the SEC.

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1 Same thing happened here. They got delisted off the
2 stock exchange. Right now the shares that U.S. investors have
3 dropped, I forget the number, it's like 90 percent or
4 95 percent. Right. And now to say, oh well, come after us in
5 China, is exactly what Mr. Shi and the individual defendants
6 have been saying. Come after us in China because they know
7 there is no recourse there in China as to these individual
8 defendants. They need someone like Mr. Seiden, who is the
9 receiver, who has a network within China, within Hong Kong, to
10 make this right, to restore value to their investment.

11 So, to say that the U.S. investors need to go to China
12 to prosecute this is ridiculous. It will never happen. They
13 are not going to be able to do it. This company raised money
14 from U.S. investors, it listed on the New York stock exchange,
15 and then after it raised that money, it went dark. Okay. It
16 started transferring assets to different companies. It said,
17 sorry U.S. shareholders, we are not going to give you updates.
18 Sorry, SEC, we're not going to make our filings. We don't
19 care. Come after us in China if you can. Good luck. And
20 that's it.

21 And so, we are doing everything we can to give these
22 U.S. shareholders some recourse, and it's not easy, it's not
23 guaranteed, very likely we'll fail. We happen to have very
24 good traction on this case right now, and the receiver is doing
25 many great things. And I think he can restore value to this

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1 company and the shareholders.

2 But I think it's a ridiculous thing to say to U.S.
3 shareholders you have to go to China when they invested in New
4 York through Deutsche Bank for a company that was listed on the
5 stock exchange.

6 THE COURT: Thank you.

7 MR. CILENTO: One last thing, your Honor. I do think
8 that all of these arguments should be for another day. Okay.
9 There is no question that the receivership order is valid, and
10 according to the law and case law, even if it were later proven
11 invalid, right now it is a valid order, Mr. Shi has not
12 complied with it. It's indisputable he has not complied with
13 this valid receivership order. Whether the other side can come
14 in and dissolve the injunction and receivership order, that's
15 for another day. I don't think they will be able to. Right
16 now it is very clear that Mr. Shi is in contempt of this valid
17 order.

18 MR. MALONEY: Your Honor, I apologize for extending
19 this argument but I do want to address a few of the points
20 Mr. Cilento just made. There's some gross inconsistencies here
21 today. Earlier today Mr. Cilento said that the receiver has
22 professionals on the ground, he is taking action on the ground
23 in China, and this is all in furtherance of the receivership.
24 And then a moment ago Mr. Cilento then said that there's no
25 point in taking any action in China because there is no

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1 recourse.

2 Mr. Cilento through counsel has represented to the
3 Hong Kong court that he's taking action in the Cayman Islands
4 in connection with Link Motion and the rights of shareholders
5 in this case. Your Honor, it's just not accurate to say there
6 is no recourse to be had outside of New York.

7 If the shareholders -- ultimately what's happening
8 here is the divestment went wrong. There is a litigation that
9 the company has commenced and is participating in to try to
10 pursue its rights, as I mentioned, in connection with the
11 arbitration in Hong Kong. If the shareholders in the U.S. feel
12 their interests are implicated, they can try to join that
13 arbitration to assert their rights therein.

14 It is just not accurate to say there is no recourse to
15 be had outside of New York. And I think your Honor was right
16 to identify the possibility of a forum non conveniens issue
17 here.

18 And to finally address the issue of the compliance
19 with the order of contempt. I want to make the point that
20 Mr. Seiden in his capacity as a receiver did ask Mr. Shi to
21 invest money in the company. And specifically, his request was
22 in Exhibit 2 to Mr. Cilento's declaration, please immediately
23 fund the receivership account with \$100,000, then he provides
24 wire instruction. This instruction, in combination with the
25 PRC laws regarding the VIE structure and control of non-PRC

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1 companies over the company, places Mr. Shi in an impossible
2 situation. He's, first of all, he has no legal obligation to
3 invest his own money, and he cannot violate PRC laws by
4 directly diverting PRC assets to Mr. Seiden. That might result
5 in a termination of the VIE structure and the loss of whatever
6 value remains in Link Motion. It's impossible, and in equity,
7 the Court cannot require him to do so.

8 THE COURT: Thank you. I appreciate the arguments and
9 the clarifications on some of the issues that the parties have
10 now submitted. Mr. Shi has raised questions concerning whether
11 or not the receivership order is valid as to him, insofar as he
12 alleges that there was no proper service of the action or the
13 order on him. That raises a substantial issue which I think on
14 the record we have before us the Court is not in a position to
15 address.

16 Mr. Shi has also submitted further challenges to the
17 proceedings insofar as he is made a motion to dismiss all
18 claims, which the plaintiff has not responded to.

19 I think the only appropriate way to proceed in light
20 of these circumstances is to allow for proper responses to the
21 issues raised by Mr. Shi's motions and give the Court a more
22 substantial record on which to address the issues that have
23 been raised.

24 Mr. Cilento, what is your view so far as the time that
25 you may need in order to respond to the pending motions and the

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1 issues raised by counsel today?

2 MR. CILENTO: Your Honor, normal briefing schedule
3 would be fine with me. Maybe three weeks would be great, would
4 be enough.

5 THE DEPUTY CLERK: April 19. Friday, April 19.

6 MR. CILENTO: Sure.

7 THE COURT: Mr. Maloney?

8 MR. MALONEY: Your Honor, I would respectfully request
9 also three weeks following the opposition of plaintiff. And
10 the basis for that request is it does take me some time to get
11 communications to and from China, and to go to work with
12 written documents with my client. So I do think three weeks
13 would be appropriate. I believe that's May 10, thereabouts.

14 THE COURT: All right. Three weeks from April 19.

15 THE DEPUTY CLERK: May 10.

16 MR. MALONEY: Thank you.

17 THE COURT: Anything else, Mr. Cilento?

18 MR. CILENTO: I would just like to point out again,
19 even if we drop Mr. Shi from this lawsuit, the receivership
20 order is still in place. He's still bound to comply with that
21 order. Even if the service was invalid. Even if we dropped
22 him from the lawsuit, Link Motion appeared, we submitted a
23 brief on the injunction receivership, they didn't respond
24 because they couldn't, and then they consented.

25 The whole consent thing, I don't know if defendants'

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1 counsel is saying DLA Piper illegally entered the suit for LKM.
2 I don't know what he's saying. But they consented to the
3 receivership because they couldn't defend it. If Mr. Shi, if
4 we drop Mr. Shi from this lawsuit, Link Motion is still a
5 party, was still served, there's still jurisdiction that
6 receivership order is still valid and Mr. Shi has to comply
7 with it.

8 THE COURT: That was circular there, Mr. Cilento. If
9 he's dropped, you're saying that the receivership order is
10 still valid as to him, but he's challenging the order because
11 he's saying he wasn't properly served.

12 MR. CILENTO: He is not challenging the receivership
13 order. Because him individually, I don't know if he has
14 standing to challenge that order.

15 THE COURT: Mr. Maloney's letter of March 28, first
16 point says a motion for an order dismissing all claims against
17 Mr. Shi, dissolving the preliminary injunction entered and
18 discharging the receivership order. To me, that's a fairly
19 comprehensive challenge.

20 MR. CILENTO: Assuming that's true, that he can move
21 to do that, that's fine. That receivership order is valid
22 right now. There is no question about that. The case law is
23 very clear --

24 THE COURT: It may be valid at this point as to the
25 company, because the company's not here to defend it. But

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1 there is a defendant as to whom you are saying it is valid and
2 they're saying is not valid, and the Court is not going to take
3 your word because you say it's valid as to Mr. Shi.

4 MR. CILENTO: That receivership order says it's not,
5 you know, only parties have to comply with it.

6 THE COURT: Mr. Shi is challenging your
7 interpretation.

8 MR. CILENTO: That's fine. Until he sets aside that
9 receivership order or invalidates it, he has to comply with it
10 under the law. That's what I respectfully represent. Why is
11 he not in communication with the receiver?

12 THE COURT: Mr. Maloney?

13 MR. MALONEY: Your Honor, I think our central point
14 holds. You are correct Mr. Shi is challenging the receivership
15 order. And we believe we've presented a basis that's
16 sufficient to stay enforcement of that aspect of the order
17 against Mr. Shi, pending briefing, and that basis is that
18 complying with certain aspects of that order as interpreted by
19 Mr. Seiden, the receiver may cause Mr. Shi to be in violation
20 of PRC law. That's an untenable situation to put Mr. Shi in,
21 and he has a legitimate right to challenge the receivership
22 order on that basis.

23 I'll refer again to those portions of the SEC filings
24 that I read into the record. The company has consistently
25 disclosed its understanding of Chinese law with respect to VIE

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1 structure, and Mr. Shi should not be forced into a position
2 where he must violate PRC law, by way of what we believe to be
3 an action in New York that has no jurisdiction and was
4 improperly brought.

5 THE COURT: All right. Thank you. I've made the
6 point clear that until we are able to address these legal
7 issues raised by Mr. Shi's challenge, I will hold making a
8 determination on the contempt order. In the meantime,
9 essentially the status quo remains. That is not to say that
10 the receiver's order does not apply at least as to the company.

11 All right? So we have a briefing schedule. And we'll
12 determine the next steps when that motion or motions is fully
13 briefed. Thank you.

14 MR. CILENTO: Do we have a return date for the motion?

15 THE COURT: Well, the defendants' reply date is due
16 May 10.

17 MR. CILENTO: So come back here May 10?

18 THE COURT: May 10 is when the motion will be fully
19 briefed and the Court will then take it under advisement.

20 MR. CILENTO: Okay. Thanks.

21 MR. MALONEY: Thank you, your Honor.

22 THE COURT: Thank you.

23 (Adjourned)
24
25